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**From:** Conklin, Becca (ECY) [bcon461@ECY.WA.GOV]  
**Sent:** 2/23/2016 9:29:23 PM  
**To:** Szelag, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f1e48230d96943f8acb72810e32ce8d6-Szelag, Matthew]  
**Subject:** RE: Implementation Tools draft language for next CR 102  
**Attachments:** OTSLanguageComparisonForEPAR10.pdf

Hi Matt,

Please see the attached PDF for a comparison of the 2015 and 2016 proposed rule language. My apologies for the delay! Please let me know if you have any questions.

Thanks,

*Becca*

**Becca Conklin**  
Water Quality Standards Coordinator  
WA Dept. of Ecology  
360-407-6413  
becca.conklin@ecy.wa.gov



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**From:** Szelag, Matthew [mailto:Szelag.Matthew@epa.gov]  
**Sent:** Thursday, February 18, 2016 11:48 AM  
**To:** Conklin, Becca (ECY)  
**Subject:** RE: Implementation Tools draft language for next CR 102

Awesome, thanks!

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**Matthew Szelag** | Water Quality Standards Coordinator  
**U.S. Environmental Protection Agency | Region 10**  
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P: (206) 553.5171 | [szelag.matthew@epa.gov](mailto:szelag.matthew@epa.gov)

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**From:** Conklin, Becca (ECY) [mailto:bcon461@ECY.WA.GOV]  
**Sent:** Thursday, February 18, 2016 11:41 AM  
**To:** Szelag, Matthew <[Szelag.Matthew@epa.gov](mailto:Szelag.Matthew@epa.gov)>  
**Subject:** RE: Implementation Tools draft language for next CR 102

I think it's a fair request which may be used at other times – and not a big effort! So, I'll pull it together by tomorrow afternoon.

Thanks,

*Becca*

**Becca Conklin**  
Water Quality Standards Coordinator  
WA Dept. of Ecology

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[becca.conklin@ecy.wa.gov](mailto:becca.conklin@ecy.wa.gov)



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**From:** Szelag, Matthew [<mailto:Szelag.Matthew@epa.gov>]  
**Sent:** Thursday, February 18, 2016 11:38 AM  
**To:** Conklin, Becca (ECY)  
**Subject:** RE: Implementation Tools draft language for next CR 102

Hi Becca,

Thanks for the offer, I wasn't intending to create work for you but was just curious if the document already existed. If you think it would have utility for other situations (i.e., you think others may ask for it) and you have the time to do it, great. If not, we can certainly do the analysis ourselves. So, it's really up to you!

I'm most interested in the implementation tools since the other rule text is fairly limited.

Thanks!

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**From:** Conklin, Becca (ECY) [<mailto:bcon461@ECY.WA.GOV>]  
**Sent:** Thursday, February 18, 2016 11:27 AM  
**To:** Szelag, Matthew <[Szelag.Matthew@epa.gov](mailto:Szelag.Matthew@epa.gov)>  
**Subject:** RE: Implementation Tools draft language for next CR 102

Hi Matthew,

We do not, to my knowledge, have a single track changes document of the two proposals already created. However, I can pull this together for you without issue.

Would you like a simple version of just the proposed implementation tool language, or all proposed language?

Thanks,

*Becca*

**Becca Conklin**  
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[becca.conklin@ecy.wa.gov](mailto:becca.conklin@ecy.wa.gov)



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**From:** Szelag, Matthew [<mailto:Szelag.Matthew@epa.gov>]  
**Sent:** Thursday, February 18, 2016 11:23 AM  
**To:** Conklin, Becca (ECY)  
**Subject:** FW: Implementation Tools draft language for next CR 102

Hi Becca,

I was wondering if you would have access to this document (if it exists) since Susan is out. No rush if it needs to wait until she returns.

If I recall correctly, there were changes to the variance provision and intake credit provision, but the compliance schedule provision remained the same.

Thanks!

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**From:** Szelag, Matthew  
**Sent:** Thursday, February 18, 2016 11:02 AM  
**To:** 'Braley, Susan (ECY)' <[SUBR461@ECY.WA.GOV](mailto:SUBR461@ECY.WA.GOV)>  
**Subject:** RE: Implementation Tools draft language for next CR 102

Hi Susan,

I was wondering if you happened to have a track changes version of the updated 2016 proposed implementation tools compared to what was proposed in 2015. No worries if not as I've started to go through the variance provision noting some minor changes. But if you had a document with that readily available, that would be helpful.

Thanks!

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**From:** Szelag, Matthew  
**Sent:** Tuesday, December 22, 2015 3:38 PM  
**To:** 'Braley, Susan (ECY)' <[SUBR461@ECY.WA.GOV](mailto:SUBR461@ECY.WA.GOV)>  
**Subject:** RE: Implementation Tools draft language for next CR 102

Hi Susan,

Thanks for the opportunity to take a look at these versions of your pre-proposal implementation tools. Below are some comments for your consideration. If needed, we can discuss more the week of January 11<sup>th</sup>, when I'm back in the office.

**Compliance Schedules:** We would likely submit the same comments as before since I understand you have not changed the language in this provision.

**Intake Credits:** In general, from our initial review, the restrictions on the use of the intake credit provision seem to be as protective as the GLI. Our preliminary review indicates that you have addressed our primary comments from the previous version when it comes to the two types of intake credit provisions in the GLI (RP and NNA provisions). In this revised version, it appears that you have separated out the 2 provisions as we had recommended in our comments on the earlier version.

**Variances:** I would expect some of the same comments that we made previously as well as some new ones as a result of the regulatory revisions being finalized. Here is a quick summary of our preliminary thoughts:

- Since the regulatory revisions have been finalized, we recommend citing to 131.14 as the applicable regs regarding variances in several places throughout your provision instead of 131.10 (in fact, feel free to reference this throughout and shorten your provision if desired – I know you cite the regs in multiple places already). Additionally, the 131.14 regulations are clear that the factors are not required for variances to non 101(a)(2) uses and you may wish to consider providing the same flexibility in your provision.
- Although we do not see anything that would prevent a future variance from including a highest attainable condition/interim requirements towards making progress, we strongly recommend that you add language consistent with the final rule so that it serves the purpose of properly guiding how to adopt variances that will meet the federal requirements.
- In 5(a), the provision seems to say that you will adopt a variance for as long as it will take to meet the underlying designated use. To reiterate, a variance should be for the time necessary to meet the highest attainable condition where there is some level of certainty. The reason you would use a variance and not a compliance schedule is because there is some uncertainty surrounding meeting the original standard. If there isn't, then a compliance schedule is more appropriate.
- Consistent with the new regs at 131.14, we recommend specifying that the variance will expire if you don't submit the results of their 5-year reevaluation to EPA within 30 days.
- Regarding variance "renewals", consider clarifying to say subsequent variances (however, I know other states have used "renewal" in their variance provisions).
- We will likely reiterate that a variance is a new or revised WQS and therefore must meet the 131.20(b) requirements for public participation. You could consider adding that citation to the rule language itself.
- We will likely reiterate our previous comments that the criteria does not get modified by a variance. A variance establishes a time limited alternate criteria for the duration of the variance. The underlying use and criteria remain in effect.

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**From:** Braley, Susan (ECY) [<mailto:SUBR461@ECY.WA.GOV>]  
**Sent:** Monday, December 14, 2015 1:59 PM  
**To:** Szelag, Matthew <[Szelag.Matthew@epa.gov](mailto:Szelag.Matthew@epa.gov)>  
**Subject:** Implementation Tools draft language for next CR 102

Matt—Attached are draft documents for the 3 implementation tool sections that we are revising or adding for compliance schedules, intake credits, and variances. As I noted previously, the compliance schedule and variance language is the same as what we came out with last January. The intake credit language has been revised after receiving comments during public review that the language needed to be clarified.

Let me know if you see any areas of big concern from EPA's perspective, especially given the federal water quality standards rules that were finalized after our public review. We think these are consistent with EPA's rules, but wanted to double check.

Thanks—Susan

Susan Braley

*Watershed Management Section*

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